IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 6024 of 2006

Shri Shivaji Genbhau Bankar
and another ..Petitioners

vs.

Shri Tukaram Sakharam Bankar
and another ..Respondents

Shri D.M.Gupte for petitioners.

CORAM: S.C.DHARMADHIARI J.
3rd December,2007

P.C.

1. The petitioners were the appellants before Court below. The petitioners are original plaintiffs. The suit was filed for partition and separate possession of the share of the appellants in the suit property. That suit was dismissed by the Trial Court. Civil Appeal No.575 of 2002 was filed challenging the said judgment and during pendency thereof, application Exh.43 was preferred for amendment of the plaint. The amendment was sought so as to add property bearing C.T.survey No.119 Taluka Junnar surrounded by four boundaries by adding para 3A of the plaint. Amendment application has been rejected on the ground that the petitioners/plaintiffs have not stated in para 3, as it originally stood, that the property now sought to be added as part of the city survey

number which was earlier mentioned. The City Survey Numbers were also not mentioned. Thus, under the garb of clarifying the pleadings, a new property is sought to be added. The Court below while rejecting the application for amendment has gone into the merits of the case and even perused the documents concerned.

2. To my mind, the only ground which is material, on which the application has been rejected, is to be found in para 10. The reasons appear to be of delay and possibly because of the fact that the matter would get prolonged further in appeal.

3. To my mind, contesting respondent has only objected to the application on limited ground. The learned Judge has gone into merits of the amendment and finding that the petitioners/plaintiffs are likely to be prejudiced and delay should not defeat justice proceeded to reject it by referring to the merits of the claim. This is hardly a manner of dealing with the amendment application.

4. Be that as it may, the only respondent who had contested the claim was the one who filed the reply at Exh.50. He has been served but

none appears for him.

5. In my view, considering the pleas raised and in the facts of this case, amendment to the plaint even at the belated stage could have been granted, subject to the petitioners paying costs quantified at Rs.2500/- Upon the costs being paid within two weeks from today, amendment to be granted. In that event amendment to be carried out within two weeks thereafter. Upon service of the amended plaint, respondents are at liberty to file additional written statement which should be done within a period of four weeks from the date of receipt of the amended plaint.

5. Considering the fact that the appeal is pending from 2002, lower Appellate Court should endeavour and dispose of the same within a period of six months from the date written statement/additional written statement are filed and pleadings are completed in the lower Appellate Court. Costs to be paid in the lower Appellate Court.

6. All contentions on merits of the amended pleas including that on limitation are kept open. Petition is disposed of.

(S.C.DHARMADHIKARI J.)